

ASSEMBLY BILL

No. 2480

**Introduced by Assembly Member Wyman
(Coauthors: Assembly Members Hollingsworth, and Leonard)**

February 21, 2002

An act to amend Section 1246 of the Business and Professions Code, and to amend Section 23158 of the Vehicle Code, relating to blood tests.

LEGISLATIVE COUNSEL'S DIGEST

AB 2480, as introduced, Wyman. Blood tests.

Under existing law, only specified medical and laboratory personnel may withdraw blood for purposes of testing its alcoholic content at the request of a peace officer. These personnel include unlicensed laboratory personnel regulated under specified existing laws that provide for and determine the required qualifications for a category of 'certified phlebotomy technicians.' In the context of clinical laboratory work, these certified phlebotomy technicians generally may not withdraw blood unless supervised by a physically available physician, surgeon, nurse, or clinical laboratory licensee.

This bill would permit a certified phlebotomy technician to withdraw blood in any location and without supervision, at the direction and in the presence of a peace officer, for alcohol or drug testing in the context of a driving under the influence investigation.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1246 of the Business and Professions Code is amended to read:

1246. (a) Except as provided in subdivision (b), and in Section 23158 of the Vehicle Code, an unlicensed person employed by a licensed clinical laboratory may perform venipuncture or skin puncture for the purpose of withdrawing blood or for clinical laboratory test purposes upon specific authorization from a licensed physician and surgeon provided that he or she meets both of the following requirements:

(1) He or she works under the supervision of a person licensed under this chapter or of a licensed physician or surgeon or of a licensed registered nurse. A person licensed under this chapter, a licensed physician or surgeon, or a registered nurse shall be physically available to be summoned to the scene of the venipuncture within five minutes during the performance of those procedures.

(2) He or she has been trained by a licensed physician and surgeon or by a clinical laboratory bioanalyst in the proper procedure to be employed when withdrawing blood in accordance with training requirements established by the State Department of Health Services and has a statement signed by the instructing physician and surgeon or by the instructing clinical laboratory bioanalyst that such training has been successfully completed.

(b) (1) On and after the effective date of the regulations specified in paragraph (2), any unlicensed person employed by a clinical laboratory performing the duties described in this section shall possess a valid and current certification as a “certified phlebotomy technician” issued by the department. However, an unlicensed person employed by a clinical laboratory to perform these duties pursuant to subdivision (a) on that date shall comply with this requirement within three years after the effective date of those regulations.

(2) The department shall adopt regulations for certification by January 1, 2001, as a “certified phlebotomy technician” that shall include all of the following:

(A) The applicant shall hold a valid, current certification as a phlebotomist issued by a national accreditation agency approved

1 by the department, and shall submit proof of that certification
2 when applying for certification pursuant to this section.

3 (B) The applicant shall complete education, training, and
4 experience requirements as specified by regulations that shall
5 include, but not be limited to, the following:

6 (i) At least 40 hours of didactic instruction.

7 (ii) At least 40 hours of practical instruction.

8 (iii) At least 50 successful venipunctures.

9 However, an applicant who has been performing these duties
10 pursuant to subdivision (a) may be exempted from the
11 requirements specified in clauses (ii) and (iii), and from 20 hours
12 of the 40 hours of didactic instruction as specified in clause (i), if
13 he or she has at least 1,040 hours of work experience, as specified
14 in regulations adopted by the department.

15 It is the intent of the Legislature to permit persons performing
16 these duties pursuant to subdivision (a) to use educational leave
17 provided by their employers for purposes of meeting the
18 requirements of this section.

19 (3) Each “certified phlebotomy technician” shall complete at
20 least three hours per year or six hours every two years of
21 continuing education or training. The department shall consider a
22 variety of programs in determining the programs that meet the
23 continuing education or training requirement.

24 (4) He or she has been found to be competent in phlebotomy by
25 a licensed physician and surgeon or person licensed pursuant to
26 this chapter.

27 (5) He or she works under the supervision of a licensed
28 physician and surgeon, licensed registered nurse, or person
29 licensed under this chapter, or the designee of a licensed physician
30 and surgeon or the designee of a person licensed under this chapter.

31 (6) The department shall adopt regulations establishing
32 standards for approving training programs designed to prepare
33 applicants for certification pursuant to this section. The standards
34 shall ensure that these programs meet the state’s minimum
35 education and training requirements for comparable programs.

36 (7) The department shall adopt regulations establishing
37 standards for approving national accreditation agencies to
38 administer certification examinations and tests pursuant to this
39 section.

(8) The department shall charge fees for application for and renewal of the certificate authorized by this section of no more than twenty-five dollars (\$25).

(c) *Notwithstanding subdivisions (a) and (b), a certified phlebotomy technician may draw blood at the request and in the presence of a peace officer for purposes of alcohol or drug testing pursuant to Section 23158 of the Vehicle Code in any location and without supervision.*

(d) The department may adopt regulations providing for the issuance of a certificate to an unlicensed person employed by a clinical laboratory authorizing only the performance of skin punctures for test purposes.

SEC. 2. Section 23158 of the Vehicle Code is amended to read:

23158. (a) Only a licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory bioanalyst, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, *certified phlebotomy technician*, or certified paramedic acting at the request of a peace officer may withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of breath specimens. An emergency call for paramedic services takes precedence over a peace officer's request for a paramedic to withdraw blood for determining its alcoholic content. A certified paramedic shall not withdraw blood for this purpose unless authorized by his or her employer to do so.

(b) The person tested may, at his own expense, have a licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory bioanalyst, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or any other person of his or her own choosing administer a test in addition to any test administered at the direction of a peace officer for the purpose of determining the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of his or her blood, breath, or urine. The failure or inability to obtain an additional test by a person does not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

1 (c) Upon the request of the person tested, full information
2 concerning the test taken at the direction of the peace officer shall
3 be made available to the person or the person's attorney.

4 (d) Notwithstanding any other provision of law, no licensed
5 physician and surgeon, registered nurse, licensed vocational nurse,
6 duly licensed clinical laboratory technologist or clinical
7 laboratory bioanalyst, unlicensed laboratory personnel regulated
8 pursuant to Sections 1242, 1242.5, and 1246 of the Business and
9 Professions Code, or certified paramedic, or hospital, laboratory,
10 or clinic employing or utilizing the services of the licensed
11 physician and surgeon, registered nurse, licensed vocational nurse,
12 duly licensed laboratory technologist or clinical laboratory
13 bioanalyst, unlicensed laboratory personnel regulated pursuant to
14 Sections 1242, 1242.5, and 1246 of the Business and Professions
15 Code, or certified paramedic, owning or leasing the premises on
16 which tests are performed, shall incur any civil or criminal liability
17 as a result of the administering of a blood test in a reasonable
18 manner in a hospital, medical laboratory, or medical clinic
19 environment, according to accepted medical practices, without
20 violence by the person administering the test, and when requested
21 in writing by a peace officer to administer the test.

22 (e) If the test given under Section 23612 is a chemical test of
23 urine, the person tested shall be given such privacy in the taking
24 of the urine specimen as will ensure the accuracy of the specimen
25 and, at the same time, maintain the dignity of the individual
26 involved.

27 (f) The department, in cooperation with the State Department
28 of Health Services or any other appropriate agency, shall adopt
29 uniform standards for the withdrawal, handling, and preservation
30 of blood samples prior to analysis.

31 (g) As used in this section, "certified paramedic" does not
32 include any employee of a fire department.

33 (h) Consent, waiver of liability, or the offering to, acceptance
34 by, or refusal of consent or waiver of liability by the person on
35 whom a test is administered, is not an issue or relevant to the
36 immunity from liability for medical personnel or the medical
37 facility under subdivision (d).

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